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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 WILLIAM SORGEN,

13 Plaintiff,

14 vs.
15

16 The CITY AND COUNTY OF SAN
FRANCISCO, San Francisco Police Chief
17 HEATER FONG, San Francisco Police
Officer BRIAN OLIVER (#776), and DOES
18 1-20,

19 Defendants.
20

Case No. C-05-03172-TEH

**STIPULATION AND ~~[PROPOSED]~~
ORDER DISMISSING PLAINTIFF'S
CLAIMS UNDER 42 U.S.C. § 1983
AGAINST THE CITY AND COUNTY OF
SAN FRANCISCO, AND PLAINTIFF'S
DAMAGES CLAIMS FOR NON GARDEN
VARIETY EMOTIONAL DAMAGES**

21 The parties, through their undersigned counsel, hereby stipulate and request that the
22 Court dismiss plaintiff's *Monell* claims, sounding in 42 U.S.C. § 1983, against the City and
23 County of San Francisco ("City"), as well as any claims for damages based on non-garden
24 variety emotional damages, including without limitation plaintiff's claims for intentional and
25 negligent infliction of emotional distress.

26 Plaintiff agrees to allege and seek only garden variety emotional damages, as that
27 term is defined in the cases of *Houghton v. M & F Fishing, Inc.*, 198 F.R.D. 666,668 (S.D. Cal.
28 2001) and *Thiessen v. General Electric Capital Corp.*, 178 F.R.D. 568, 570 (D.Kan. 1998).

1 San Francisco stipulate that in connection to the matters alleged in the pleadings, without
2 admitting any such matters, that Officer Oliver and Chief Fong were acting in the course and
3 scope of their employment and therefore if they are liable San Francisco is obligated to
4 indemnify these individuals under the California Government Code, except for an award of
5 punitive damages.

6
7 Respectfully Submitted,

8 DATED: January 26, 2006

9 JOHN VIOLA
10 BEN ROSENFELD

11 By: s/ - John Viola
12 JOHN VIOLA
13 Attorneys for Plaintiff

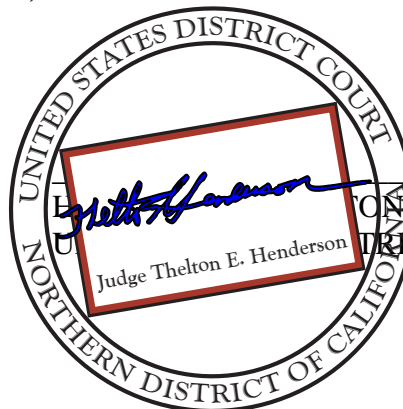
14 DATED: January 26, 2006

15 DENNIS J. HERRERA
16 City Attorney
17 JOANNE HOEPER
18 Chief Trial Deputy
19 PETER J. KEITH
20 Deputy City Attorneys

21 By: s/ Peter J. Keith
22 PETER J. KEITH
23 Attorneys for Defendants

24 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

25 Dated: 01/26/06



Thelton E. Henderson
DISTRICT JUDGE